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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DAVID SILVERMAN, on behalf of
himself and others similarly situated,

Plaintiffs,

SmithKline Beecham Corporation,
dba GlaxoSmithKline; and DOES 1
to 10, Inclusive,

Defendants.

CASE NO.: CV06-07272-DSF (CTx)
Complaint Filed: November 14, 2006

**PROTECTIVE ORDER (NOT LIMITED
TO DISCOVERY) GOVERNING THE
AMERICAN MEDICAL
ASSOCIATION'S CONFIDENTIAL
INFORMATION FOR
CONSIDERATION BY HON. DALE S.
FISCHER**

MARY STEHLE, on behalf of
herself and all others similarly
situated,

Plaintiffs,

SmithKline Beecham Corporation,
dba GlaxoSmithKline; and DOES 1
to 10, Inclusive,

Defendants.

Consolidated into CASE NO. CV 06-
07272 DSF (CTx) for purposes of
discovery and law and motion.

CASE NO. CV 07-2601 DSF (CTX)
Complaint Filed: December 14, 2006

Court: Roybal, Courtroom 840
Jude: Dale S. Fischer

ORDER

The Court, having reviewed the “Stipulation Re: Protective Order (Not Limited To Discovery) Governing The American Medical Association’s Confidential Information For Consideration By Hon. Dale S. Fischer”, and good cause appearing therefore, it is hereby

ORDERED THAT:

1. The Stipulation is approved in its entirety.

2. **IT IS FURTHER ORDERED THAT** the AMA has designated certain information to which this Protective Order applies as follows: all prior versions, all contemplated versions, all contemplated changes to AMA Ethical Opinion E-8.061, any existing drafts of AMA Ethical Opinion E-8.061, and any notes regarding AMA Ethical Opinion E-8.061 (hereinafter “Confidential Information.”) In addition, certain portions of deposition transcripts may be deemed Confidential Information pursuant to Section III below.

3. **IT IS FURTHER ORDERED THAT** the AMA’s basis for confidentiality is as follows: the Confidential Information is proprietary internal communications not intended to be the published policies and procedures of the AMA.

1 4. **IT IS FURTHER ORDERED THAT** specific prejudice and harm will
2 result to the AMA if the Confidential Information is disclosed including, but not
3 limited to, confusion as to the published AMA Ethical Opinion E-8.061, as well as a
4 chilling effect of free and open discussion of policies within the AMA prior to
5 publication of ethical opinions.

6 5. **IT IS FURTHER ORDERED THAT** Confidential Information
7 produced by the AMA pursuant to this Protective Order in the form of a document
8 shall be stamped or otherwise marked by the AMA with the following designations:
9 “AMA CONFIDENTIAL” or “CONFIDENTIAL INFORMATION SUBJECT TO
10 AMA PROTECTIVE ORDER.”

11 6. **IT IS FURTHER ORDERED THAT** notwithstanding the designation
12 of Confidential Information, such information shall not be Confidential Information,
13 nor shall disclosure be limited in accordance with this Protective Order, where such
14 information:

15 a. at the time of disclosure, is in the public domain by publication or
16 otherwise;

17 b. subsequent to disclosure, through no act or failure to act on the
18 part of the Parties, entered the public domain by publication or otherwise;

19 c. is already in the possession of a Party free of any obligation of
20 confidence at the time it was communicated to such Party; or

21 d. is provided to a Party by a third party who obtained the
22 information by legal means without any obligation of confidence to any party;
23 or

24 e. was developed by employees or agents of any Party
25 independently of and without any reference to any information communicated
26 by the AMA.

27 **II. RIGHT OF ACCESS TO CONFIDENTIAL INFORMATION**
28

1 1. **IT IS FURTHER ORDERED THAT** Confidential Information shall
2 be disclosed only to:

3 a. Courts of law, Court personnel, and any jurors who may hear this
4 action;

5 b. the Parties;

6 c. the attorneys of record in this action and employees of their
7 respective law firms or legal departments, all of whom shall be bound by this
8 Protective Order;

9 d. persons not employed by or otherwise affiliated with any of the
10 Parties who are retained by or on behalf of any of the attorneys of record in
11 this action solely to assist them in this action (including, but not limited to,
12 independent accountants, statisticians, economists, and other experts, and
13 other consultants) (hereinafter "Experts & Consultants"), but only after each
14 such Experts & Consultants have reviewed this Protective Order and executed
15 a Declaration Form provided in Section II, Paragraph 4 below; and/or

16 e. actual or potential witnesses, provided there is a reasonable basis
17 to believe that the witness will give relevant testimony regarding the
18 Confidential Information, and provided that said witness has reviewed this
19 Protective Order and executed a Declaration Form provided in Section II,
20 Paragraph 4 below.

21 2. **IT IS FURTHER ORDERED THAT** the Parties, their attorneys, their
22 employees, their Experts & Consultants, and their witnesses understand and agree
23 that the Confidential Information is to be used solely for the purpose of prosecuting
24 and/or defending the above-entitled action, and if applicable, in any subsequent court
25 proceeding concerning any judgment that may be awarded by a jury at trial.

26 3. **IT IS FURTHER ORDERED THAT** the Parties, their attorneys, their
27 employees, their Experts & Consultants, and their witnesses understand and agree
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1 that they will not make the Confidential Information available to any person or
2 entity, other than as provided herein.

3 4. **IT IS FURTHER ORDERED THAT** each Party's attorney shall keep
4 custody of declarations signed by Experts & Consultants, and their witnesses.
5 Following designation of expert witnesses, and upon request, a Party shall provide
6 the other Party with copies of every signed declaration of their experts. As to any
7 consultant(s) who has (have) not been designated as an expert, the Party retaining
8 such consultant(s) shall provide a written representation from their attorney that all
9 consultants, who received Confidential Information, have executed this declaration.
10 As to any witness(es), the Party disclosing Confidential Information to such
11 witness(es) shall provide a written representation from their attorney that all
12 witness(es), who received Confidential Information, have executed this declaration.
13 The declaration shall be in the following form:

14 DECLARATION OF _____

15 I, _____, declare as follows:

16 1. I have personal knowledge of the facts set forth in this
17 Declaration, and if called and sworn as a witness, I would
testify competently to those facts.

18 2. I have read a copy of the Stipulation and Protective Order
19 (Not Limited To Discovery) Governing The American Medical
20 Association's Confidential Information For Consideration By
21 Hon. Dale S. Fischer (hereinafter the "Protective Order")
entered in the captioned action with respect to the treatment of
22 Confidential Information. I understand that I am bound by its
terms. Attached hereto and marked as Exhibit "1" is a true and
correct copy of the Protective Order.

23 3. I hereby agree that I shall not disclose or use any
24 Confidential Information except in accordance with the terms of
the Protective Order.

25 4. I consent to the jurisdiction of the Court in which this
26 matter is currently pending, for all purposes related to the
enforcement of the obligations covered, created or recognized
27 by the Protective Order.

28 5. I understand that any use of Confidential Information in
any manner contrary to the provisions of the Protective Order

may subject me to contempt sanctions of the Court.

I declare under penalty of perjury under the laws of this State and the United States of America that the foregoing foregoing is true and correct.

Executed on _____(date), at _____(city),
_____(state).

[Declarant]

(hereinafter the "Declaration Form")

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III. CONFIDENTIAL INFORMATION IN DEPOSITIONS

1. **IT IS FURTHER ORDERED THAT** other than a witness appearing pursuant to subpoena or notice, the court reporter, any translator, and any videographer, no person may be present at a deposition conducted in this matter who is not authorized to receive Confidential Information pursuant to this Protective Order.

2. **IT IS FURTHER ORDERED THAT** during the course of any deposition, any Party may use Confidential Information as exhibits and may designate specific portions of testimony regarding the Confidential Information as Confidential Information. The reporter shall prepare that portion of the testimony, and those exhibits designated as Confidential Information, as a separate transcript, which shall be placed in a separate envelope attached to the deposition transcript and marked as "AMA CONFIDENTIAL" OR "CONFIDENTIAL INFORMATION SUBJECT TO AMA PROTECTIVE ORDER." Any use of the transcript in any proceedings in this matter shall be governed as set forth below.

3. **IT IS FURTHER ORDERED THAT** any Party and the AMA shall have thirty (30) days from receipt of any deposition transcript to review that transcript and designate additional testimony as Confidential Information. Counsel designating additional testimony as Confidential Information shall provide notice to

1 all other counsel, and shall further prepare and serve a Supplemental Confidential
2 Deposition Index, which shall contain the following information: deponent name,
3 page/line reference, and grounds for confidentiality.

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5 **IV. CHALLENGE TO DESIGNATION OF CONFIDENTIAL**
6 **INFORMATION**

7 1. **IT IS FURTHER ORDERED THAT** any challenge to a designation
8 of Confidential Information must be initiated with a letter stating why the
9 information should not be confidential. This letter shall be sent to the AMA or the
10 counsel for the Party who designated the Confidential Information (the “Designating
11 Party.”) This letter may be sent at any time and shall be sent via facsimile and U.S.
12 mail. This letter will constitute the beginning of any meet-and-confer process
13 required before formal motions. The challenging Party must include a reasonably
14 specific identification of the Confidential Information subject to their challenge.

15 2. **IT IS FURTHER ORDERED THAT** the Designating Party will have
16 fourteen (14) business days from the date of such challenge to respond in writing.
17 An extension of time to respond by the Designating Party may be agreed upon in
18 writing by all participants involved in the dispute.

19 3. **IT IS FURTHER ORDERED THAT** failure by the Designating Party
20 to respond, either within fourteen (14) business days or within the time otherwise
21 agreed to by all participants involved in the dispute, will be deemed as acquiescence
22 and the Confidential Information shall lose its protected status.

23 4. **IT IS FURTHER ORDERED THAT** in the event that the participants
24 involved in the dispute are unable to resolve any challenge to a designation of
25 Confidential Information through meet and confer efforts, the Designating Party may
26 present such dispute to the Court by motion or otherwise. In addition, nothing
27 precludes the Party who challenges the designation of Confidential Information from
28 bringing a motion challenging the designation of Confidential Information at any

1 time after production. Any motion concerning designation of Confidential
 2 Information must be brought in conformance with the FRCP and Central District
 3 Local Rule 37.¹ In the resolution of any motion before the Court, regardless of who
 4 brings the motion, the burden of establishing confidentiality shall always be on the
 5 party who made the claim of confidentiality.

6 **5. IT IS FURTHER ORDERED THAT** during the pendency of any
 7 motion challenging any designation of Confidential Information, the challenged
 8 material shall remain subject to the protections of this Protective Order until ordered
 9 otherwise by the Court. Furthermore, neither the confidential portion of the motions
 10 (or other legal pleadings), nor the Confidential Information, shall be made part of the
 11 public record, unless the motion results in the Confidential Information losing its
 12 protected status.

13 **V. MOTION PROCEDURE CONCERNING CONFIDENTIAL** 14 **INFORMATION**

15 **1. IT IS FURTHER ORDERED THAT** other than motions that may be
 16 filed pursuant to Section IV of this Protective Order, prior to filing a motion which
 17 will reveal, or is likely to reveal, Confidential Information in a pleading, as a lodged
 18 exhibit, or in oral argument, the moving party shall meet and confer with the
 19 Designating Party and shall identify all Confidential Information which shall be
 20 revealed or is likely to be revealed. This meet and confer is in an attempt to resolve
 21 any conflicts as to disclosure of the Confidential Information (for example, by
 22 stipulation to the fact at issue, to the filing of a redacted version of the document at
 23 issue, or such other arrangement that addresses the interests of both parties).

24 **2. IT IS FURTHER ORDERED THAT** if any Party intends to file or
 25 lodge Confidential Information with the Court, such Party shall submit the
 26 _____

27 ¹ United States District Court, Central District of California, Local Civil Rule 37 can be
 28 found at: <http://www.cacd.uscourts.gov/CACD/LocRules.nsf/Local+Rules?OpenView>

1 appropriate application to file documents under seal and shall comply with Central
2 District Local Rule 79-5. If such application is granted, Confidential Information
3 shall be filed in sealed envelopes or containers on which shall be written the title of
4 this action, the identity of the party filing and/or serving the material, the designation
5 “CONFIDENTIAL” and a statement substantially in the following form: “This
6 envelope contains materials subject to a Protective Order entered in this action and
7 sealed pursuant to the [date] order of the Hon. _____. It is not to
8 be opened or the contents thereof to be displayed, revealed or made public, except by
9 further order of the Court.” No such sealed envelope shall be opened except by the
10 Court or on Court order.

11 3. **IT IS FURTHER ORDERED THAT** the designation of Confidential
12 Information does not entitle the parties to have those documents filed under seal.
13 The parties are required to make the appropriate showing that the Court should allow
14 the Confidential Information to be filed under seal. See Kamakana v. City and
15 County of Honolulu, 447 F. 3d 1172, 1178-81 (9th Cir.2006). Any application to
16 file documents under seal in proceedings before the district judge should be made to
17 the district judge.

18 4. **IT IS FURTHER ORDERED THAT** any Confidential Information
19 filed or lodged with the Court shall be kept confidential and not disclosed to any
20 third party absent a valid order from the Court, except as permitted herein.

21 5. **IT IS FURTHER ORDERED THAT** if oral argument of a motion will
22 result in revealing the substance of the submitted confidential documents, such oral
23 argument shall be made in camera or in such other manner as the Court may direct to
24 ensure the confidentiality of the substance of those documents. Any portion of the
25 recorded transcripts of the argument where Confidential Information is revealed shall
26 not be made part of the public record and shall be treated as Confidential Information
27 subject to the terms and conditions of this Protective Order, unless the court orders
28

1 otherwise.

2 6. **IT IS FURTHER ORDERED THAT** this Protective Order may not
3 prevent any Party or non-party from utilizing Confidential Information in
4 conjunction with any Court filing or at time of trial. Furthermore, if the court should
5 deny a request to file papers under seal, for reasons other than a Party's or non-
6 party's failure to submit a proper request therefore, the Confidential Information at
7 issue may be filed as if never designated as Confidential Information.

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9 **VI. RIGHT TO SEEK OR AGREE TO OTHER ORDERS**

10 **IT IS FURTHER ORDERED THAT** this Protective Order shall not prevent
11 any party from applying to the Court for relief herefrom, or from applying to the
12 Court for further or additional protective orders, or from agreeing among themselves
13 to modify or vacate any orders relating to this Protective Order, subject to approval
14 of the Court.

15 **VII. NOTICE OF DISCLOSURE**

16 1. **IT IS FURTHER ORDERED THAT** in the event of any disclosure of
17 Confidential Information to any person other than as provided in this Protective
18 Order, written notice of such disclosure shall be given to all parties to the action by
19 the party whose side made the disclosure within five (5) court days of that party's
20 discovery of the disclosure.

21 2. **IT IS FURTHER ORDERED THAT** the Disclosing Party shall make
22 every effort to prevent further disclosure by it or by the person who was the recipient
23 of the Confidential Information.

24 3. **IT IS FURTHER ORDERED THAT** any motion concerning
25 disclosure of Confidential Information shall be brought in compliance with Central
26 District Local Rule 37.

27 **VIII. DISPOSAL OF CONFIDENTIAL INFORMATION**

1 persons receiving information pursuant to the terms of this Protective Order for the
2 purpose of enforcing all obligations arising hereunder.

3 2. **IT IS FURTHER ORDERED THAT** the Parties expressly agree that
4 entering into this Protective Order does not prejudice, limit, or impact the right of
5 any Party to seek the transfer of venue from the United States District Court Central
6 District of California to another venue. If such a transfer is granted, the Parties agree
7 to the jurisdiction of the Court where the litigation is pending to resolve any dispute
8 or issue arising out of this Protective Order.

9 **X. VIOLATION OF PROTECTIVE ORDER**

10 **IT IS FURTHER ORDERED THAT** any Party or non-party may file a
11 motion requesting that the Court sanction or hold in contempt of Court anyone who
12 violates the terms of this Protective Order.

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14 Dated: June 19, 2008

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HONORABLE DALE S. FISCHER